

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants : W. Daniel Hillis, *et al*
Application No. : 10/734,658
Confirmation No. : 9013
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TITLE : SPATIAL-TO-TEMPORAL DATA TRANSLATION AND
TRANSMISSION

Examiner : ARPAN SAVLA
Art Unit : 2185
Docket No. : SE1-0002C3-US
(formerly 0305-003-005C-000000)
Customer No. : 80118

Mail Stop Appeal Brief -- Patents
Commissioner for Patents
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APPELLANT'S REPLY BRIEF

Dear Madam or Sir:

This paper is responsive to the Examiner's Answer dated March 30, 2010 (hereinafter "Examiner's Answer"), having a shortened statutory time for response due on June 1st, 2010 (May 30th being a Sunday and May 31st being a holiday), in which the Examiner raised additional arguments in support of the instant rejections. Appellant hereby responds to the Examiner's additional arguments.

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I. ARGUMENTS RAISED IN REJECTION: 35 USC §103(A)

The USPTO has stated, “Claims 1-4, 9-15, 17-21, 26-29, 34-36, 39, 40, and 42-46 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al. (U.S. Pat. No. 5,920,701) (hereinafter “Miller”) in view of Jaeger (U.S. Pat. No. 6,345,028) [hereinafter “Jaeger”] and Ma et al. (U.S. Pat. No. 5,926,649) (hereinafter “Ma”). Examiner’s Answer, p. 3 (30 March 2010).

A. Statement of Representative Claim 1:

Claim 1 is similar to Independent Claims 26 and is chosen as a representative claim for at least some purposes of this discussion. Claim 1 recites:

1. A method comprising:

publishing a schedule of content transmission, the schedule being defined in response to an order in which the at least one content is spatially resident upon at least one hardware spatial data storage system, the schedule identifying the content by one or more times;

reading at least one content from the at least one hardware spatial data storage system in a fashion independent of the schedule of content transmission; and

transmitting the at least one content to a temporal data storage system in accord with the published schedule.

B. Argument Given in the Office Action dated 5 October 2009:

The argument given in the Office Action dated 5 October 2009 argues as follows:

6. As per claims 1 and 26, but more specifically claim 1, Miller discloses a method comprising:

publishing a schedule of content transmission, the schedule identifying the content by one or more times (col. 3, lines 1-2; col. 13, lines 4-9; Fig. 3, element 114);

transmitting the at least one content to a temporal data storage system in accord with the published schedule (col. 3, lines 3-8; col. 13, lines 10-13; Fig. 3, element 116; col. 5, lines 39-48; Fig. 1, elements 16, 18, 20; Fig. 2, element 46). *It should be noted that the "tape drives" within the "replicated servers" are analogous to a "temporal data storage system."*

Miller does not disclose reading at least one content from at least one hardware spatial data storage system in a fashion independent of the schedule of content transmission.

Jaeger discloses reading at least one content from at least one hardware spatial data storage system in a fashion independent of the schedule of content transmission (col. 5, lines 49-52; col. 2, lines 41-45; Fig. 1, element 11). *It should be noted that the "data signals/tracks" are analogous to the "at least one content" and that the "disk drive" is analogous to a "hardware spatial data storage system."*

Miller and Jaeger are analogous art because they are from the same field of endeavor, that being data transmission.

At the time of the invention it would have been obvious to a person of ordinary skill in the art to implement Jaeger's reordering of data signals within Miller's content source's hard disk drives because all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded the predictable results of maximizing the number of data signals that can be transmitted from a disk drive by minimizing seek time of the disk drive head.

The combination of Miller/Jaeger does not disclose the schedule being defined in response to an order in which the at least one content is spatially resident upon at least one hardware spatial data storage system.

Ma discloses the schedule being defined in response to an order in which the at least one content is spatially resident upon at least one hardware spatial data storage system (col. 9, lines 10-22; col. 10, lines 43-60; Figs. 4 and 5). *It should be noted that "disk-based storage system 14" is equivalent to the "hardware spatial data storage system". It should also be noted that the schedules in Fig. 5 are defined in response to*

the location of data in the disk-based storage system. The location of data in the disk-based storage system dictates the order of data in the disk based storage system. Therefore, it follows that the schedules in Fig. 5 are also defined in response to the order of the data in the disk-based storage system.

The combination of Miller/Jaeger and Ma are analogous art because they are from the same field of endeavor, that being data transmission.

At the time of the invention it would have been obvious to a person of ordinary skill in the art to apply Ma's scheduling technique to Miller/Jaeger's distribution schedule. The motivation for doing so would have been to provide sequential-like parallel retrieval suitable for supporting real-time multimedia data distribution for large numbers of clients

(Office Action mailed 5 October 2009 at pp. 3-5).

C. Arguments Raised in Examiner's Answer dated 30 March 2010

The arguments raised in the Examiner's Answer dated 30 March 2010 argues as follows:

1. Arguments Raised in Response to B.1.a

The Examiner respectfully disagrees and refers Appellant above to the rejection of claim 1 which clearly explains how the combination of Miller/Jaeger/Ma renders claim 1 unpatentable. Notwithstanding, as explained in previous Office actions, the Examiner submits that Miller's "transmission instructions" are equivalent to Appellant's "schedule" and Miller's "content data" is equivalent to Appellant's "content". As admitted by Appellant themselves on page 51 of the Appeal Brief, col. 13, lines 4-6 of Miller disclose:

"...the scheduler 10 distributes transmission instructions to the content sources 12, 14. These instructions include the time to start transmitting the content data."

Thus, it is clear that Miller's "time to start transmitting the content data" discloses Appellant's "one or more times." Based on the foregoing, it follows that Miller's transmission instructions ("schedule") identifies the content data ("content") by one or

more times ("Time to start transmitting the content data"). In order to support the Examiner's position, Appellant is directed to Fig. 6, element 600 of Appellant's drawings as well as lines 4-7 of the third full paragraph on page 10 of Appellant's specification which state:

"Method step 600 shows printing the schedule of content transmission times on a medium. In one implementation, a paper liner having a list of contents and associated times of transmission of such contents are printed. For example, printing a page containing the information "Joe Smith's echocardiogram will be transmitted at times T1, T8, T30, etc." (emphasis added)

Thus, it is quite evident that Miller's distribution of transmission instructions which include the time to start transmitting the content data is equivalent to Appellant's example in which a page is printed containing the times Joe Smith's echocardiogram will be transmitted. Therefore, based on the foregoing, Miller sufficiently discloses "the schedule identifying the content by one or more times", as simply and broadly claimed by Appellant. Accordingly, the combination of Miller/Jaeger/Ma renders claim 1 unpatentable.

Furthermore, the Examiner notes that Appellant's arguments in section B.1.a. of the Appeal Brief fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Lastly, the Examiner notes that Appellant's arguments in section B.1.a. of the Appeal Brief do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Examiner's Answer mailed 30 March 2010 at pp. 21-23.

2. Arguments Raised in Response to B.1.b.1

The Examiner respectfully disagrees and refers Appellant above to the response to B.1.a. which details how Miller discloses "the schedule identifying the content by one or more times". Accordingly, the combination of Miller/Jaeger/Ma renders claim 1 unpatentable.

Examiner's Answer mailed 30 March 2010 at p. 23.

3. Arguments Raised in Response to B.1.b.2

The Examiner respectfully disagrees. The Examiner notes that Appellant's argument in section B.1.b.2, is based on the allegation that Miller does not disclose "the schedule identifying the content by one or more times", however, the Examiner refers Appellant above to the response to B.1.a. which details how Miller does in fact disclose "the schedule identifying the content by one or more times". Accordingly, the combination of Miller/Jaeger/Ma renders claim 1 unpatentable.

Examiner's Answer mailed 30 March 2010 at p. 24.

4. Arguments Raised in Response to B.1.b.3

The Examiner respectfully disagrees. The Examiner notes that Appellant's arguments in section B.1.b.3, do not dispute Jaeger's disclosure of "reading at least one content from at least one hardware spatial data storage system in a fashion independent of the schedule of content transmission", but rather Appellant argues that Jaeger does not disclose "the schedule identifying the content by one or more times". However, as can be seen from the rejection of claim 1 above, the Examiner relies on Miller to disclose "the schedule identifying the content by one or more times". Therefore, the Examiner refers Appellant above to the response to B.1.a. which details how Miller discloses "the schedule identifying the content by one or more times". Accordingly, the combination of Miller/Jaeger/Ma renders claim 1 unpatentable.

Examiner's Answer mailed 30 March 2010 at pp. 24-25.

5. Arguments Raised in Response to B.1.b.4

The Examiner respectfully disagrees. The Examiner notes that Appellant's argument in section B.1.b.4. is based on the allegation that Jaeger does not disclose "the schedule identifying the content by one or more times". However, as can be seen from the rejection of claim 1 above, the Examiner relies on Miller to disclose "the schedule identifying the content by one or more times". Therefore, the Examiner refers Appellant above to the response to B.1.a. which details how Miller discloses "the schedule identifying the content by one or more times". Accordingly, the combination of Miller/Jaeger/Ma renders claim 1 unpatentable.

Examiner's Answer mailed 30 March 2010 at p. 25.

6. Arguments Raised in Response to B.1.b.5

The Examiner respectfully disagrees. The Examiner notes that Appellant's arguments in section B.1.b.5. do not dispute Ma's disclosure of "the schedule being defined in response to an order in which the at least one content is spatially resident upon at least one hardware spatial data storage system", but rather Appellant argues that Ma does not disclose "the schedule identifying the content by one or more times". However, as can be seen from the rejection of claim 1 above, the Examiner relies on Miller to disclose "the schedule identifying the content by one or more times". Therefore, the Examiner refers Appellant above to the response to B.1.a. which details how Miller discloses "the schedule identifying the content by one or more times". Accordingly, the combination of Miller/Jaeger/Ma renders claim 1 unpatentable.

Examiner's Answer mailed 30 March 2010 at p. 26.

7. Arguments Raised in Response to B.1.b.6

The Examiner respectfully disagrees. The Examiner notes that Appellant's argument in section 8.1.b.9, is based on the allegation that Ma do not disclose "the schedule identifying the content by one or more times". However, as can be seen from the rejection of claim 1 above, the Examiner relies on Miller to disclose "the schedule identifying the content by one or more times". Therefore, the Examiner refers Appellant above to the response to B.1.a. which details how Miller discloses "the schedule identifying the content by one or more times". Accordingly, the combination of Miller/Jaeger/Ma renders claim 1 unpatentable.

Examiner's Answer mailed 30 March 2010 at p. 27.

8. Arguments Raised in Response to B.1.b.7

The Examiner respectfully disagrees. The Examiner notes that Appellant's argument that the suggested modifications/combinations would change the principle of operation of Miller is based on the allegation that Miller does not disclose "the schedule identifying the content by one or more times" and therefore incorporating such features into Miller would change the principle of operation. However, such an allegation is erroneous because, as detailed in the response to B.1.a. above, Miller discloses "the schedule identifying the content by one or more times". Consequently, since Miller does in fact disclose "the schedule identifying the content by one or more times", the suggested modifications/combinations would not change the principle of operation of Miller. Accordingly, the combination of Miller/Jaeger/Ma renders claim 1 unpatentable.

Notwithstanding the foregoing, contrary to Appellant's numerous allegations, the Examiner submits that the rejection of claim 1 contains sufficient teaching to modify/combine such references to meet the recitations of independent claim 1. As detailed above in the rejection of claim 1, Miller and Jaeger are analogous art because they are from the same field of endeavor, that being data transmission and at the time of the invention it would have been obvious to a person of ordinary skill in the art to implement Jaeger's reordering of data signals within Miller's content source's hard disk drives because all the claimed elements were known in the prior art and one skilled in

the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded the predictable results of maximizing the number of data signals that can be transmitted from a disk drive by minimizing seek time of the disk drive head. As further detailed above in the rejection of claim 1, the combination of Miller/Jaeger and Ma are analogous art because they are from the same field of endeavor, that being data transmission and at the time of the invention it would have been obvious to a person of ordinary skill in the art to apply Ma's scheduling technique to Miller/Jaeger's distribution schedule, the motivation for doing so would have been to provide sequential-like parallel retrieval suitable for supporting real-time multimedia data distribution for large numbers of clients. Accordingly, the rejection of claim 1 contains sufficient teaching to modify/combine such references to meet the recitations of independent claim 1.

Examiner's Answer mailed 30 March 2010 at pp. 28-29.

9. Arguments Raised in Response to B.1.b.8

The Examiner respectfully disagrees. Appellant quotes col. 3, lines 26-32 of Miller and then goes on to state, *"it is unclear, at best, how these purposes can be served by a method or apparatus publishing a schedule [sic] of content transmission, the schedule identifying the content by one or more times in conjunction with recited features of independent Claim 1. Thus, for at least this reason, the suggested modifications/combinations would render the technologies of Miller unsatisfactory for their intended purposes."* (see pages 53-54 of the Appeal Brief). Thus, again the Examiner notes that Appellant's argument is based on the allegation that Miller does not disclose "the schedule identifying the content by one or more times". However, such an allegation is erroneous because, as detailed in the response to B.1.a. above, Miller discloses "the schedule identifying the content by one or more times". Consequently, since Miller does in fact disclose "the schedule identifying the content by one or more times", the suggested modifications/combinations would not render the technologies of Miller unsatisfactory for their intended purposes. Accordingly, the combination of Miller/Jaeger/Ma renders claim 1 unpatentable.

Notwithstanding the foregoing, contrary to Appellant's numerous allegations, the Examiner submits that the rejection of claim 1 contains sufficient teaching to modify/combine such references to meet the recitations of independent claim 1. As detailed above in the rejection of claim 1, Miller and Jaeger are analogous art because they are from the same field of endeavor, that being data transmission and at the time of the invention it would have been obvious to a person of ordinary skill in the art to implement Jaeger's reordering of data signals within Miller's content source's hard disk drives because all the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded the predictable results of maximizing the number of data signals that can be transmitted from a disk drive by minimizing seek time of the disk drive head. As further detailed above in the rejection of claim 1, the combination of Miller/Jaeger and Ma are analogous art because they are from the same field of endeavor, that being data transmission and at the time of the invention it would have been obvious to a person of ordinary skill in the art to apply Ma's scheduling technique to Miller/Jaeger's distribution schedule, the motivation for doing so would have been to provide sequential-like parallel retrieval suitable for supporting real-time multimedia data distribution for large numbers of clients. Accordingly, the rejection of claim 1 contains sufficient teaching to modify/combine such references to meet the recitations of independent claim 1.

Examiner's Answer mailed 30 March 2010 at pp. 30-31.

D. Appellant's Response to Argument given in Examiner's Answer dated 30 March 2010

1. Answer to Arguments Raised in Response to B.1.a

Appellant respectfully traverse (for example) the assertion stated in the Examiner's Answer dated 30 March 2010 that Miller's "transmission instructions" are equivalent to Appellant's "schedule" and that Miller's "content data" is equivalent to

Appellant's "content." The Examiner's Answer asserts that because Miller discloses that the "[transmission] instructions include the time to start transmitting the content data," that "Thus, it is clear that Miller's 'time to start transmitting the content data' discloses Appellants 'one or more times.'" (Appellants note that Miller fails to recite "the schedule identifying the content by one or more times.") In the following sentence, the Examiner's Answer asserts: "Based on the foregoing, it follows that Miller's transmission instructions ('schedule') identifies the content data ("content") by one or more times." Appellants traverse this assertion because (at least) the Examiner's Answer fails to show (e.g., in the foregoing argument) the basis of how the "time to start transmitting the content data" (from Miller) recites "identifying the content by one or more times" (from Appellant's Independent Claim 1).

The Examiner's Answer in its next sentence (p. 22, first sentence) directs the reader's attention to appellant's own disclosure ("in order to support the Examiner's position") where element 600 of Fig. 6 discloses "the schedule of content transmission times on a medium," in one implementation being "a paper flyer having a list of contents and associated time of transmission of such contents." The Examiner's Answer then uses the disclosure to conclude that "it is quite evident that Miller's distribution of transmission instructions which include the time to start transmitting the content data is equivalent to Appellant's example in which a page is printed containing the time Joe Smith's echocardiogram will be transmitted."

Appellant's traverse these assertions at least because Miller's "transmission instructions" do not "identif[y] the content by one or more times." Miller instead recites:

The transmission of data (e.g., a computer file) from one or more content sources over a network to one or more replicated servers is scheduled and performed according to the schedule. The content sources request the schedule from a network resource scheduler. The scheduler receives the requests and determines if and how the various requests can be accommodated. The scheduler determines at least a start time and a transfer rate for each of the content sources that can be accommodated.

(Miller, AbsTract, emphasis added.)

The cited portions of Miller do not show, for example, that content sources provide information to the network *resource* scheduler (not “network *content* scheduler”) that would identify the content of the data to be transmitted. Instead, the “transmissions instructions” of Miller include “the time to start transmitting the content data” for instructing a content source of when (and not for identifying what content) to transmit the start. Thus, the network resource scheduler cannot identify the content data to be transmitted because the network resource scheduler demonstratively does not receive information from the content sources for identifying the content data. Thus, the “transmission instructions” of Miller are not and cannot be used for defining “a schedule identifying the content by one or more times” as recited by Independent Claim 1.

In contrast to the recited portion of Miller, Appellant’s disclosure shows the example cited by the Examiner’s Answer as follows: “Joe Smith’s echocardiogram will be transmitted at times T1, T8, T30, etc.” Thus, the example identifies the content (“Mr. Smith’s echocardiogram”) and lists times (“T1, T8, T30, etc.”) at which the identified content (“Mr. Smith’s echocardiogram”) is to be transmitted. Thus, a potential recipient may chose to receive based on identification what the content is identified as being (rather than when data from a content source is to be transmitted).

Appellants also traverse the rejection at least because applying applicant’s own disclosure to Miller would change the principle of operation of Miller from scheduling based on system resources such as transfer rate (the “when”) to scheduling based on identifying content to be transmitted (the “what”). Appellants also traverse the rejection at least because changing the principal of operation of Miller would involve substantial reconstruction and redesign of the elements shown in Miller and would as well involve a change in the basic principle under which the Miller construction was designed to operate.

At least for the foregoing reasons, Claims 1-4, 9-15, 17-21, are at least allowable over Miller, Jaeger, and Ma, and the Examiner’s rejections of Claims 1-4, 9-15, 17-21 under 35 USC § 103(a) should be reversed. Independent Claim 26 is similar to Claim 1 and thus is allowable for at least the reasons discussed above. Dependent Claims 27-29, 34-36, 39, 40, and 42-46 are patentable for at least reasons of dependency from Independent Claim 26.

2. Answer to Arguments Raised in Response to B.1.b.1

Appellant respectfully traverses the rejection for reasons stated in the Appeal Brief (filed 17 February 2010) and for reasons stated above with respect to the “Answer to Arguments Raised in Response to B.1.a” and submits claims 1-4, 9-15, 17-21, 26-29, 34-36, 39, 40, and 42-46 are patentable over the combination of Miller/Jaeger/Ma.

3. Answer to Arguments Raised in Response to B.1.b.2

Appellant respectfully traverses the rejection for reasons stated in the Appeal Brief (filed 17 February 2010) and for reasons stated above with respect to the “Answer to Arguments Raised in Response to B.1.a” and submits claims 1-4, 9-15, 17-21, 26-29, 34-36, 39, 40, and 42-46 are patentable over the combination of Miller/Jaeger/Ma.

4. Answer to Arguments Raised in Response to B.1.b.3

Appellant respectfully traverses the rejection for reasons stated in the Appeal Brief (filed 17 February 2010) and for reasons stated above with respect to the “Answer to Arguments Raised in Response to B.1.a” and submits claims 1-4, 9-15, 17-21, 26-29, 34-36, 39, 40, and 42-46 are patentable over the combination of Miller/Jaeger/Ma.

5. Answer to Arguments Raised in Response to B.1.b.4

Appellant respectfully traverses the rejection for reasons stated in the Appeal Brief (filed 17 February 2010) and for reasons stated above with respect to the “Answer to Arguments Raised in Response to B.1.a” and submits claims 1-4, 9-15, 17-21, 26-29, 34-36, 39, 40, and 42-46 are patentable over the combination of Miller/Jaeger/Ma.

6. Answer to Arguments Raised in Response to B.1.b.5

Appellant respectfully traverses the rejection for reasons stated in the Appeal Brief (filed 17 February 2010) and for reasons stated above with respect to the “Answer to Arguments Raised in Response to B.1.a” and submits claims 1-4, 9-15, 17-21, 26-29, 34-36, 39, 40, and 42-46 are patentable over the combination of Miller/Jaeger/Ma.

7. Answer to Arguments Raised in Response to B.1.b.6

Appellant respectfully traverses the rejection for reasons stated in the Appeal Brief (filed 17 February 2010) and for reasons stated above with respect to the “Answer to Arguments Raised in Response to B.1.a” and submits claims 1-4, 9-15, 17-21, 26-29, 34-36, 39, 40, and 42-46 are patentable over the combination of Miller/Jaeger/Ma.

8. Answer to Arguments Raised in Response to B.1.b.7

Appellant respectfully traverses the rejection for reasons stated in the Appeal Brief (filed 17 February 2010) and for reasons stated above with respect to the “Answer to Arguments Raised in Response to B.1.a” and submits claims 1-4, 9-15, 17-21, 26-29, 34-36, 39, 40, and 42-46 are patentable over the combination of Miller/Jaeger/Ma.

9. Answer to Arguments Raised in Response to B.1.b.8

Appellant respectfully traverses the rejection for reasons stated in the Appeal Brief (filed 17 February 2010) and for reasons stated above with respect to the “Answer to Arguments Raised in Response to B.1.a.” Appellant notes that the Examiner’s Answer states that “Appellant’s argument is based on the allegation that

Miller does not disclose ‘the schedule identifying the content by one or more times’” and that the “allegation is erroneous because, as detailed in the response to B.1.a above, Miller discloses ‘the schedule identifying the content by one or more times.’”

The Examiner’s Reply relies on the allegation that “Miller does in fact disclose ‘the schedule identifying the content by one or more times,’” to conclude “the suggested modification/combinations would not render the technologies of Miller unsatisfactory for their intended purposes.” Appellants traverse both the stated reasoning and conclusion because (as stated above in the “Answer to Arguments Raised in Response to B.1.a”), the network resource scheduler of Miller cannot identify the content data to be transmitted because the network resource scheduler demonstratively does not receive information from the content sources for identifying the content data to be transmitted. Because, the proposed modification of Miller would change the principle of operation from scheduling based on system resources (the “when”) to scheduling based on identifying content to be transmitted (the “what”), the technologies of Miller would be rendered unsatisfactory for their intended purposes (e.g., determining when to transmit data at a given rate of transmission).

Thus, Appellant submits claims 1-4, 9-15, 17-21, 26-29, 34-36, 39, 40, and 42-46 are patentable over the combination of Miller/Jaeger/Ma.

II. CONCLUSION

For the foregoing reasons, Appellant respectfully submits that the Examiner’s rejections under 35 USC § 103(a) should be reversed. Please note that if there are any matters that may be expedited by telephone conference, the Examiner is kindly invited to contact the undersigned at (360) 649-5566.

Respectfully submitted,

__ May 27th, 2010 __

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